

Ratesetting

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER  
FLORIO** (Mailed 10/6/2015)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison  
Company (U 338-E) for Approval of the  
Results of Its 2013 Local Capacity  
Requirements Request for Offers for the  
Western Los Angeles Basin.

Application 14-11-012  
(Filed November 21, 2014)

**DECISION APPROVING, IN PART, RESULTS OF SOUTHERN CALIFORNIA  
EDISON COMPANY LOCAL CAPACITY REQUIREMENTS REQUEST  
FOR OFFERS FOR THE WESTERN LA BASIN PURSUANT TO  
DECISIONS 13-02-015 AND 14-03-004**

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DECISIONS 13-02-015 AND 14-03-004**

## Summary

We approve, in part, the results of the request for offers (RFO) conducted by Southern California Edison Company (SCE) pursuant to the Commission's directives in Decisions (D.)13-02-015 and D.14-03-004 issued in Rulemaking 12-03-014,<sup>1</sup> with the exceptions of ~~seven~~[six](#) contracts. Six contracts with NRG Distributed Generation PR, LLC ~~and one contract with NRG Curtailment Solutions, LLC~~ are denied on the basis that the underlying resources do not meet our definition of "Preferred Resources," ~~and the terms and conditions of those contracts are unreasonable~~ [for purposes of this RFO](#). SCE has substantially complied with the procurement directives in Decisions 13-02-015 and 14-03-004.

This proceeding is closed.

## 1. Procedural Background

This application proceeding centers around two Commission decisions, Decision (D.) 13-02-015 and D.14-03-004, issued in Rulemaking (R.) 12-03-014. On February 13, 2013, the Commission issued D.13-02-015 and ordered SCE to procure between 1,400 and 1,800 Megawatts (MW) of electrical capacity in the Western LA Basin<sup>2</sup> to meet the identified long-term local capacity requirements (LCR) by 2021.<sup>3</sup> The Commission found the Western LA Basin LCR existed, in

<sup>1</sup> R.12-03-014, *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* (March 22, 2012).

<sup>2</sup> The terms Western LA Basin or LA Basin are used herein to mean the West Los Angeles sub-area of the Los Angeles basin local reliability area, as discussed more fully in D.13-02-015.

<sup>3</sup> D.13-02-015 at 130-131 (Ordering Paragraph [OP] 1).

large part, due to the expected retirement of once-through-cooling (OTC) generation facilities.<sup>4</sup>

Subsequently, on March 13, 2014, the Commission issued D.14-03-004 and ordered SCE to procure an additional 500 to 700 MW by 2021 to meet local capacity needs stemming from the retirement of the San Onofre Nuclear Generating Station (SONGS).<sup>5</sup>

Combined, the Commission in D.13-02-015 and D.14-03-004 directed SCE to procure between 1,900 to 2,500 MW in the Western LA Basin. These two decisions directed SCE to procure minimum amounts of the specified resources, including Preferred Resources,<sup>6</sup> Energy Storage,<sup>7</sup> and Gas-Fired Generation.<sup>8</sup> Specifically, the Commission set SCE's minimum procurement directive at 550 MW of Preferred Resources, 50 MW of Energy Storage, 1,000 MW of

<sup>4</sup> California Energy Commission's Tracking Progress, Once-Through Cooling Phase-Out (last updated on February 17, 2015) at 6 (total MW from the retirement of the following OTC plants in the LA Basin: El Segundo 4; Huntington Beach 1 & 2; Redondo Beach 5, 7; Redondo Beach 6, 8; Alamitos 1, 2; Alamitos 3, 4; and Alamitos 5, 6) available at [http://www.energy.ca.gov/renewables/tracking\\_progress/documents/once\\_through\\_cooling.pdf](http://www.energy.ca.gov/renewables/tracking_progress/documents/once_through_cooling.pdf).

<sup>5</sup> D.14-03-004 at 141-143 (OP 1).

<sup>6</sup> The term Preferred Resources is based on the State's Energy Action Plan II (September 21, 2005) at 2 and described in the following quote from the "Summery and Introduction" section of the Energy Action Plan II: "The loading order identifies energy efficiency and demand response as the State's preferred means of meeting growing energy needs. After cost-effective [energy] efficiency and demand response, we rely on renewable sources of power and distributed generation, such as combined heat and power applications. To the extent [energy] efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, we support clean and efficient fossil-fired generation. Concurrently, the bulk electricity transmission grid and distribution facility infrastructure must be improved to support growing demand centers and the interconnection of new generation, both on the utility and customer side of the meter." The State's Energy Action Plan II, *Implementation Roadmap for Energy Policies*, (a joint document adopted by the California Energy Commission and the California Public Utilities Commission, (September 21, 2005) at [http://www.energy.ca.gov/energy\\_action\\_plan/index.html](http://www.energy.ca.gov/energy_action_plan/index.html).

<sup>7</sup> D.14-03-004 at 100 (SCE "may also procure energy storage as part of [its] preferred resources requirement[ ] or all-source authorization [ ]....").

<sup>8</sup> D.13-02-015 at 130-131 (OP 1); D.14-03-004 at 141-143 (OP 1).

Gas-Fired Generation, and an additional 300 MW from any resource type.<sup>9</sup> On approximately September 12, 2013, SCE launched an RFO for local capacity resources in the Western LA Basin.<sup>10</sup>

On November 21, 2014, SCE filed this Application for approval of the results of its 2013 LCR RFO for the Western LA Basin.<sup>11</sup>

On January 12, 2015, the Office of Ratepayers Advocates (ORA) and the Sierra Club filed protests. Other parties filed responses to the Application, including California Energy Storage Alliance (CESA), EnerNOC, Inc. (EnerNOC), the Western Power Trading Forum, the Alliance for Retail Energy Markets (AReM) and the Direct Access Customer Coalition (DACC).

On May 5 and 6, 2015, evidentiary hearings were held. Testimony was heard. Parties filed concurrent briefs and reply briefs. All documents filed in this proceeding are available at the Docket Card on the Commission's website.

SCE seeks approval of 63 contracts selected through the LCR RFO process. A summary of the selected offers is provided in the Table<sup>12</sup> below.

<sup>9</sup> D.14-03-004 at 141-143 (OP 1).

<sup>10</sup> Exhibit SCE-1 at 5 and 10.

<sup>11</sup> SCE's Application is available on the Commission's website at the *Docket Card*.

<sup>12</sup> Exhibit SCE-1 at 3.

Product Category	Counterparty	Total Contracts	Max Quantity (LCR MW)
<b>Preferred Resources and ES</b>			
EE	<ul style="list-style-type: none"> <li>Onsite Energy Corporation</li> <li>Sterling Analytics LLC</li> <li>NRG Energy Efficiency-L LLC</li> <li>NRG Energy Efficiency-P LLC</li> </ul>	26	124.04
DR	<ul style="list-style-type: none"> <li>NRG Distributed Generation PR LLC</li> <li>NRG Curtailment Solutions LLC</li> </ul>	7	75.00
Renewable DG	<ul style="list-style-type: none"> <li>Solar Star California XXXV, LLC</li> <li>Solar Star California XXXVI, LLC</li> <li>Solar Star California XXXVII, LLC</li> <li>Solar Star California XXXVIII, LLC</li> </ul>	4	37.92
ES	<ul style="list-style-type: none"> <li>AES ES Alamitos, LLC</li> <li>Ice Bear SPV #1, LLC</li> <li>Hybrid-Electric Building Technologies Irvine 1, LLC</li> <li>Hybrid-Electric Building Technologies Irvine 2, LLC</li> <li>Hybrid-Electric Building Technologies West Los Angeles 1, LLC</li> <li>Hybrid-Electric Building Technologies West Los Angeles 2, LLC</li> <li>Stem Energy Southern California, LLC</li> </ul>	23	263.64
<b>Total Preferred Resources and ES</b>		<b>60</b>	<b>500.60</b>
<b>GFG</b>			
GFG	<ul style="list-style-type: none"> <li>AES Alamitos Energy, LLC</li> <li>AES Huntington Beach Energy, LLC</li> <li>Stanton Energy Reliability Center, LLC</li> </ul>	3	1,382.00
<b>Total Preferred Resources, ES, and GFG</b>		<b>63</b>	<b>1,882.60</b>

### 1.1. Standard of Review

We review today's application and request therein under a reasonableness standard. The question presented is whether SCE conducted its RFO in a reasonable manner, consistent with the law and Commission decisions, and whether the results are reasonable.

## **2. Scope of Issues**

The issues to be determined are:

1. Whether the results of SCE's 2013 LCR RFO for the LA Basin enhance the safe and reliable operation of SCE's electrical service?
2. Does the Application comply with the procurement authority granted by the Commission in D.13-02-015 and D.14-03-004?
3. Should the Commission require SCE to submit a procurement plan proposing how it plans to meet the minimum authorized preferred resource MW amounts specified in D.13-02-015 and D.14-03-04?
4. Are the results of SCE's 2013 LCR RFO for the LA Basin a reasonable means to meet the 1,900 to 2,500 MW of identified LCR need determined by D.13-02-015 and D.14-03-04? This issue includes consideration of the reasonableness of at least the following:
  - a. Are the price, terms and conditions of the LCR contracts reasonable?
  - b. Are the demand response contracts consistent with the Commission's policy on back-up generation?
  - c. Are the demand response contracts vulnerable to derating?
  - d. Did SCE's RFO process limit certain resource bids from being considered? If so, were these limitations reasonable?
  - e. Was the process used to develop the eligibility requirements reasonable?
  - f. Did the process and outcome of any consultations between the California Independent System Operator and SCE impact resources requirements and contract selection? If so, was this impact reasonable?
  - g. Are the LCR RFO contracts consistent with the Commission's Emissions Performance Standards?
5. Should the Commission approve these contracts prior to completion and a final decision by the California Energy



Commission (CEC) of the California Environmental Quality Act (CEQA) review? The CEC is the lead agency for purposes of the CEQA review. As a result, environmental matters will largely be resolved by the CEC.

6. Is SCE's proposed rate treatment, cost recovery, and cost allocation just and reasonable? (A workshop for the purpose of clarifying SCE's proposed Cost Allocation Mechanism (CAM) treatment will not be necessary.)

### **3. The Results of SCE's RFO Support Safe and Reliable Service**

We find that the results of SCE's RFO consistent with the CAISO's planning assumptions in the 2014-2015 transmission plan and support the safe and reliable operation of SCE's electrical service.

The CAISO analyzed the results of the RFO in the context of the draft 2014-2015 transmission plan and found that the proposed RFO procurement can meet long-term local capacity requirement needs when combined with repurposing of existing demand response resources in the Western LA Basin starting ~~2012~~ 2021.<sup>13</sup> SCE and the CAISO worked together to confirm that the location and characteristics of the procured resources would meet local capacity needs.<sup>14</sup> The CAISO finds that SCE's RFO procurement is reasonable based on the locational effectiveness factors identified in both its 2013-2014 and 2014-2015 transmission plans.<sup>15</sup> The selected resources will effectively address two major reliability concerns for the LA Basin and San Diego areas and will address the residual need in the Western LA Basin with modifications to existing demand response.<sup>16</sup>

<sup>13</sup> Exhibit CAISO-2/Sparks at 8; Exhibit CAISO-1/Millar at 4.

<sup>14</sup> Exhibit CAISO-1/Millar at 5.

<sup>15</sup> Exhibit CAISO-1/Millar at 6.

<sup>16</sup> Exhibit CAISO-2/Sparks at 4.



Accordingly, based on the CAISO's local capacity requirement analyses, we find that the selected RFO resources will enhance the reliable operation of SCE's electrical service and support reliability of service starting in 2021.

**4. The SCE RFO Complies with D.14-03-004 and D.13-02-015, With Certain Exceptions**

SCE issued the RFO pursuant to the procurement directives in two Commission decisions, D.14-03-004 and D.13-02-015.

D.13-02-015 ordered SCE to procure between 1,400 and 1,800 MW of electrical capacity in the Western LA Basin to meet the long-term capacity requirements resulting from the expected retirement of once through cooling generation facilities.<sup>17</sup> D.14-03-004 directed SCE to procure an additional 500 to 700 MW by 2021 to meet local capacity needs resulting from the retirement of SONGS.<sup>18</sup> In total, the two decisions directed SCE to procure 1,900 to 2,500 MW. D.14-03-004 also directed SCE to procure specific types of resources to meet this identified local capacity need. D.14-03-004 mandated a minimum of 550 MW of Preferred Resources, 50 MW of energy storage, 1,000 MW of Gas-Fired Generation, and an additional 300-500 MW from any resource type.<sup>19</sup>

In this application, SCE seeks approval of contracts totaling approximately 1,883 MW of capacity.<sup>20</sup> The results of SCE's RFO are approximately 17 MW short of the minimum procurement target for capacity in the Western LA Basin area. According to SCE's application, SCE procured approximately 500 MW from Preferred Resources and Energy Storage. In addition, the results of SCE's

<sup>17</sup> D.13-02-015 at 130-31 (OP 1).

<sup>18</sup> D.14-03-004 at 141-42 (OP 5-7).

<sup>19</sup> D.14-03-004 at 141-43 (OP 1).

<sup>20</sup> Exhibit SCE-1/Cushnie at 3.

RFO are short by approximately 99 MW of Preferred Resources.<sup>21</sup> SCE states its intention to address the shortfall after considering the CAISO updated LCR studies to account for planned transmission upgrades, load forecast updates, and additional analyses in its 2014-2015 transmission plan.<sup>22</sup>

Taking into account these deficiencies, the approximately 17 MW short in total procurement and 99 MW short in procurement within the Preferred Resources category, we find that the results of the RFO substantially comply with the procurement directives in D.14-03-004 and D.13-02-015. We find that SCE designed and conducted the LCR RFO based on a procurement plan approved by the Energy Division,<sup>23</sup> and with oversight by an Independent Evaluator and review throughout the LCR RFO process by the Energy Division and SCE's Cost Allocation Mechanism Group.<sup>24</sup> The record shows that the LCR RFO elicited a robust response from a broad range of resources capable of satisfying the LCR need.<sup>25</sup> Following a comprehensive review of offers and many rounds of negotiations with bidders,<sup>26</sup> SCE selected and executed 63 contracts. We find the results reasonable, with the exception of ~~seven~~<sup>six</sup> contracts discussed further below.

Moreover, we find reasonable SCE's suggestion that it take into consideration updated CAISO analyses in determining whether and when to

<sup>21</sup> The application seeks approval for 1,382 MW of new capacity from Gas-Fired Generation, which meets the minimum 1,000 MW requirement, plus the addition 300-500 MW from any resource type. Exhibit SCE-1/Bryson at 78. The Request for Offers (RFO) results include a total of 500.6 MW of Preferred Resources, including energy efficiency, demand response, and energy storage. Exhibit SCE-1/Bryson at 64. D.14-03-004 only required SCE to procure 50 MW of energy storage. SCE seeks approval for 263.64 MW of both in front of the meter and behind the meter Energy Storage. Exhibit SCE-1/Bryson at 71.

<sup>22</sup> Exhibit SCE-1/Bryson at 78; Exhibit SCE-1/Cushnie at 97.

<sup>23</sup> Exhibit SCE-1/Cushnie at 5.

<sup>24</sup> Exhibit SCE-1/Bryson at 28-30.

<sup>25</sup> Exhibit SCE-1/Bryson at 35 "SCE received a very robust set of offers. In total, SCE received 1,136 offers . . . spanning all of the technology types SCE solicited."

<sup>26</sup> Exhibit SCE-1/Bryson at 35-38.

procure the remaining authorized MW of Preferred Resources. In addition, SCE states that it will continue to target LCR resources through its existing procurement mechanisms, as appropriate.<sup>27</sup>

Accordingly, we conclude that the results of the SCE RFO issued pursuant to D.14-03-004 and D.13-02-015 reasonable, with the exception of ~~seven~~[six](#) contracts, and that additional time and analyses will most likely produce the best result moving forward and prior to additional LCR procurement.

Moreover, to further the Commission's efforts of grid reliability and safety in this local area, and in light of the need to review additional and more current CAISO analysis, we find that SCE has satisfied the procurement requirements of D.14-03-004 and D.13-02-015, and SCE is relieved from any *requirement* to procure additional resources as part of the RFO required by D.14-03-004 and D.13-02-015. To the extent that further analysis indicates that additional procurement is necessary, however, SCE remains *authorized* to obtain additional preferred resources (only), up to the limits specified in D.14-03-004 or via other approved procurement mechanisms.

## 5. The SCE RFO was Reasonable

We find that the SCE RFO was reasonable.

[This RFO was unique in that it was the first all-source RFO wherein both conventional and preferred resources competed in the same solicitation.](#) The Independent Evaluator, Sedway Consulting, Inc., noted that it "believe[d] that SCE pursued reasonable and adequate procedures for notifying potential interested parties....On the LCR RFO launch date..., SCE issued a press release and emailed over 3,400 industry contacts (compiled from previous power supply solicitations, regulatory service lists, etc.) that the LCR RFO had been released

<sup>27</sup> Exhibit SCE-1/Cushnie at 97.

and invited them to participate. SCE also notified all CAM members of the LCR RFO's launch."<sup>28</sup> The Independent Evaluator ultimately "concluded that SCE did a good job of publicizing the 2013 LCR RFO solicitation, and that the solicitation was quite robust, as evidenced by the substantial response that it received from the bidding community."<sup>29</sup>

~~In short, SCE worked collaboratively and diligently with stakeholders and bidders to remove potential obstacles that may have interfered with the ability of Preferred Resource service providers to contract with SCE.~~

Accordingly, we find that while SCE's choices were not perfect, and parties may point to certain area where better choices could have been made, the choices made by SCE were reasonable based on the directives of the Commission and the market circumstances at that time.

While we find that SCE administered the RFO reasonably, important lessons can be learned from this solicitation in order to improve future all-source procurement. We take note of parties' comments that certain resources were disadvantaged in the evaluation process; in particular, EnerNOC expressed concern that the operational requirements for Demand Response changed considerably well after bids were submitted.<sup>30</sup> We see room for improvement in the all-source RFO process, and therefore direct SCE, in consultation with Energy Division staff, to facilitate a workshop to explore how to bring more transparency to the RFO process, examine criteria and methods used to assess bids, and review the processes for determining resource operational requirements. The recommendations and changes resulting from this workshop should be applied to any residual procurement of Preferred Resources.

**6. NRG Contracts Totaling ~~7570~~ MW -  
Offers 447200- 447205 ~~& 447250~~ Are Denied**

Under D.13-02-015 and D.14-03-004, the Commission set SCE's minimum procurement authorization at 550 MW of Preferred Resources.<sup>3031</sup> To meet a

<sup>28</sup> Exhibit SCE-2, Appendix D at D-34 to D-35.

<sup>29</sup> Exhibit SCE-2, Appendix D at D-35.

<sup>30</sup> [EnerNOC October 26, 2015 Opening Comments at 8.](#)

<sup>3031</sup> The origin of the term Preferred Resources is described in fn. 6, above.

small part of SCE's this minimum Preferred Resource procurement requirement, SCE seeks approval of six contracts with NRG Distributed Generation DR, LLC and one contract with NRG Curtailment Solutions, LLC (collectively "NRG") that provide a total of 75 MW.<sup>3432</sup>

The critical issue regarding these seven contracts is the type of resource (or absence thereof) to be used by the ~~back-up~~behind-the-meter (BTM) generation included in each contract. Six contracts (Offers 447200-447205) totaling 70 MW of Demand Response (later described by SCE as, generally, distributed generation)<sup>3233</sup> "provide load reduction from [behind-the-meter] and backup natural Gas-Fired Generation."<sup>3334</sup> This means that during a Demand Response dispatch, gas-fired ~~backup~~BTM generators would serve the customer's load and reduce the amount of energy served by the grid.<sup>3435</sup>

The seventh contract (Offer 447250) differs in that it provides less specifics regarding the terms and conditions. The seventh contract explains that load reduction will occur "by curtailing customer energy consumption," but provides "no assurance" that load reduction will be achieved through "actual curtailment in customer energy."<sup>3536</sup> In short, the actual resource to be used for back-up is not identified. Like Offers 447200-447205, load reduction for Offer 447250 could on its face be met "by using some kind of gas generation" but details are not provided.<sup>3637</sup>

To summarize, the first six contracts will rely on Gas-Fired Generation to reduce load. The seventh contract lacks a key piece of information - the extent to which fossil fuel will be used to support load during a curtailment. ~~In the~~

<sup>3432</sup> Exhibit-SCE- 1 at 69.

<sup>3233</sup> Exhibit SCE-6 at 12.

<sup>3334</sup> Exhibit SCE-1 at 70.

<sup>3435</sup> Exhibit SCE-1 at 70.

<sup>3536</sup> Exhibit SCE-1 at 70; RT May 5, 2015, 143:11-16 (SCE/Bryon).

<sup>3637</sup> RT May 5, 2015, 143: 2-6 (SCE/Bryson).

~~absence of this key piece of information in the seventh contract, we will proceed as if gas will be relied upon, a reasonable assumption based on the terms and conditions of the six other contracts.~~ However, in comments on the October 6, 2015 proposed decision, NRG stated a willingness to amend the contract to exclude use of BTM gas-fired generation. We therefore approve Offer 447250, subject to the filing of an amended contract via a Tier 1 Advice Letter, within 45 days of the effective date of this decision.

### 6.1. Preferred Resources – Definition Clarified

ORA and Sierra Club argue that these seven NRG contracts do not meet the definition of either Demand Response or Distributed Generation. Both ORA and Sierra Club conclude that the Commission must reject these contracts as not qualifying toward the minimum Preferred Resources procurement requirement in D.13-02-015 and D.14-03-~~004.~~<sup>37</sup>004.<sup>38</sup>

The term Preferred Resources references the description of the loading order in the State's Energy Action Plan II.<sup>3839</sup> The loading order, among other things, articulates the State's policy on fossil fuel reduction and identifies a number of different types of resources as preferred (over clean conventional electricity supply), including Energy Efficiency, Demand Response, and Renewable Resources (which may include, certain renewable forms of Distributed Generation).<sup>3940</sup> Today, we clarify that for the purposes of this RFO, the reference to Distributed Generation ~~in the State's Energy Action Plan II~~ means only certain renewable energy, and the technologies that are included in that term for purposes of procurement must be consistent with the loading order and the State's policy to reduce reliance on fossil fuels. Some parties to this

<sup>3738</sup> ORA June 10, 2015 Opening Brief; Sierra Club June 10, 2015 Opening Brief.

<sup>3839</sup> See fn. 6, above.

<sup>3940</sup> D.14-03-004 at 13-14 and Pub. Util. Code 454.5(b)(9)(C). See fn. 6 for exact language from the State's Energy Action Plan II and the discussion regarding the loading order.

proceeding incorrectly claimed that all technologies described as distribution generation qualified as a Preferred Resource.

According to Sierra Club and ORA, all seven of these contracts fail to qualify as Demand Response contracts or even Preferred Resources contracts on the basis that total load reduction is not achieved<sup>4041</sup>    and fossil-fuel is relied upon.<sup>4142</sup>    The purpose of Demand Response is the reduction of net demand without the reliance on fossil fuels.<sup>4243</sup>    It is not disputed that this goal is not achieved here.

Sierra Club further states that the contracts do not qualify as Demand Response or Preferred Resources because they rely on reciprocating engines to support load during a curtailment. Reciprocating engines do not reduce net demand. Similarly, ORA and EnerNOC argue that these contracts do not constitute either Demand Response or Preferred Resources.<sup>4344</sup>   

Concerning the question of whether these contracts constitute Demand Response. For over a decade the Commission has repeatedly defined Demand Response as not including the use of fossil-fueled backup generation (BUGs).<sup>4445</sup>   

Further, the Commission stated in D.14-12-024 that fossil-fueled back-up generation are antithetical to the efforts of the Energy Action Plan and the loading order.<sup>4546</sup>    Most recently, in Resolution E-4728 the Commission ordered Inverter Owned Utilities to disallow the use of fossil-fueled BUGs in providing

<sup>4041</sup>    ORA Opening Brief at 5-6, *citing to* D.06-11-049 at 58: “[The Commission’s] objective in funding demand response programs is to reduce system demand, not to substitute electricity with electricity generated by off-grid natural gas facilities. We previously found in D.05-01-056 that back-up generation is not a true demand response resource.

<sup>4142</sup>    ORA June 10, 2015 Opening Brief at 5-7; Sierra Club June 10, 2015 Opening Brief at 6-10.

<sup>4243</sup>    Sierra Club June 10, 2015 Opening Brief at 5, *citing to* D.05-01-056 and D.06-11-049; Sierra Club July 1, 2015 Reply Brief at 2-3 *citing to* D.09-08-027.

<sup>4344</sup>    EnerNOC June 10, 2015 Opening Brief at 11.

<sup>4445</sup>    D.03-06-032 Attachment A p. 2, D.06-11-049 p. 58, D.09-08-027 pp 164-166 and ¶ D.11-03-003 p. 26.

<sup>4546</sup>    D.14-12-024, Finding of Fact 68.



Demand Response procured through the Demand Response Auction Mechanism. In that resolution, the Commission defined a fossil-fueled BUG as “distributed generation technologies using diesel, natural gas, gasoline, propane, or liquefied petroleum gas, in combined heat and power (CHP) or non-CHP configuration.”<sup>4647</sup> The only exception made to this policy was for storage technologies. Through these actions the Commission’s policy is clear: the use of fossil-fueled ~~BUGs~~BTM generation does not constitute Demand Response. While certain questions of definition and enforcement remain open and under review in R.13-09-011,<sup>4748</sup> we conclude that insofar as the NRG contracts in question rely on fossil ~~-fueled BUGS~~BTM generation, they do not constitute Demand Response.

In deciding whether these contracts qualify as Preferred Resources for purposes of SCE’s RFO, we ~~first look to the definition of the term itself. The term Preferred Resource is not always defined with precise specificity. Moreover, the generation technologies covered under this term have evolved since this term was first used in 2005 and may have been unclear at the time of SCE’s RFO. In fact, the definitions of Demand Response and Distributed Generation, two technology categories falling within Preferred Resources, are currently the subject of discussions in on-going Commission proceedings. With respect to Preferred Resources, the intent of D.14-03-004 was that~~ look to the decision authorizing SCE’s LCR procurement, D.14-03-004, which states that Energy Efficiency, Demand Response, Renewable power, and certain Distributed Generation count as preferred technologies, and specifically included Energy Storage in the category of Preferred Resources.<sup>4849</sup> Furthermore, the

<sup>4647</sup> Resolution E-4728, p. 15.

<sup>4748</sup> A staff proposal to prohibit the use of fossil-fueled back-up generation in demand response programs is under consideration in the *OIR to Enhance the Role of Demand Response in Meeting the State’s Resource Planning Needs and Operational Requirements* (ALJ Ruling [September 29, 2015]).

<sup>4849</sup> D.14-03-004 at 6-7, fn. 3.

Commission's clear intention regarding the use of both the term Preferred Resources and the loading order has ~~always~~ been to encourage reduced reliance upon conventional fossil fuel generation and to require procurement of "renewable generation to the fullest extent possible."<sup>4950</sup>

For these reasons, we find that these contracts fail to constitute Preferred Resources because they rely on natural gas-fired ~~backup~~ BTM generation to reduce the amount of energy served by the grid. We clarify today that the procurement authorized in D.14-03-004 includes only certain renewable technologies as Preferred Resources under the term Distributed Generation – a resource is not Preferred simply because it functions as Distributed Generation.<sup>5051</sup> Therefore, we deny SCE's request to enter into these contracts, with the exception of a suitably amended Offer 447250.

## **~~6.2. Contract Terms and Conditions Are Unreasonable~~**

~~Before turning to the substance of these contracts, we address a procedural issue. NRG and SCE suggest that the Commission cannot review the terms and conditions of these seven contracts now because the contracts are executed, meaning that the contracts are already agreed to by the utility and the counterparty. SCE states that ORA missed its chance to oppose these contracts, which, according to SCE, was during the Procurement Review Group (PRG) meetings. SCE also concedes that parties in the PRG are not afforded the opportunity to really change the contracts, only to make comments that SCE takes "under advisement."~~

<sup>4950</sup> D.07-12-052 at 12.

<sup>5051</sup> This is consistent with the recently approved Resolution E-4728, which excludes fossil-fueled resources from participating in the demand response auction mechanism.

~~In response, ORA points out that the Commission is required to determine the reasonableness of the contracts, not to accept them as agreed to by the negotiating parties and the regulated utility.~~

~~We agree with ORA that now is the appropriate time for the Commission to review the terms and conditions of these contracts and to determine the reasonableness. SCE and NRG's arguments are without merit and would render the Commission's entire review in this proceeding meaningless.~~

~~Regarding the substance of the contracts, we further agree with ORA that the terms of the seven contracts contain loopholes that render the contracts unreasonable and subject the ratepayers to excessive costs. As a result, we do not approve of these contracts. These loopholes in these contracts consist of the following:~~

- ~~1. The contracts lack adequate assurance that ratepayers will obtain value by failing to provide a reasonable amount of information regarding the participating accounts to fulfill expected capacity to ensure reliability.~~
- ~~2. The contracts permit dual and overlapping participation in the CAISO market and SCE's demand response programs which leaves ratepayers vulnerable to overpayment.~~
- ~~3. The contracts are overvalued as performance and payment is based on seller's average best performing hour rather than capacity rating on performance during all event hours.~~
- ~~4. The contracts fail to provide reasonable value to the ratepayer because a SCE is only able to call a seller dispatch within a three-day period, rather than 30-day period, which more closely resembles the actual dispatch.~~

~~On this basis, we would not approve the seven NRG contracts as reasonable, regardless of whether they are viewed as Demand Response, Distributed Generation, or simply additional Gas-Fired Generation.~~

**6.2. ~~6.3.~~ No Further Procurement Is Required  
under the RFO pursuant to D.13-02-015  
and D.14-03-004**

We further find that SCE has substantially complied with its Preferred Resource procurement requirement in D.13-02-015 and D.14-03-004 and is relieved from any *obligation* to procure the ~~75~~<sup>70</sup> MW associated with these ~~seven~~<sup>six</sup> contracts or the other remaining MW. However, the *authorization* to procure additional Preferred Resources remains, and SCE may undertake such additional procurement, following additional analysis, either through additional RFOs or via other authorized procurement mechanisms.

**7. The 100 MW Cap on Energy Storage Was  
Reasonable Under the Conditions Existing at that Time**

As part of the RFO for the Western LA Basin, SCE did not consider bids for in front of the meter (IFOM) Energy Storage above 100 MW.<sup>5452</sup> ORA, Powers Engineering, and Sierra Club argue the cap is unjustified and arbitrary.<sup>5253</sup>

Powers Engineering suggest that Energy Storage, if evaluated without the 100 MW cap, could have provided services that the procured GFG cannot, such as volt-ampere reactive or VAR support and frequency response.<sup>5354</sup> Sierra Club further suggests it is unreasonable, unsupported by facts, and results in the proposed procurement that violates the Loading Order.<sup>5455</sup> Sierra Club further asserts that, as a direct result of the artificial 100 MW cap on IFOM Energy Storage, SCE selected the gas-fired Stanton ~~Peaker~~<sup>Energy Reliability Center</sup> (Stanton), a choice which was inconsistent with the loading order and prevented

<sup>5452</sup> This practice by SCE was referred during this proceeding as the 100 MW cap. Exhibit SCE-6 at 3.

<sup>5253</sup> ORA June 10, 2015 Opening Brief at 18-16; Sierra Club June 10, 2015 Opening Brief at 10-16.

<sup>5354</sup> Powers Engineering June 10, 2015 Opening Brief at 16.

<sup>5455</sup> Sierra Club June 10, 2015 Opening Brief at 10-16.

lower-cost better-fit options from being chosen.<sup>5556</sup> ORA uses examples from the list to demonstrate that removing the 100 MW cap would reduce greenhouse gas (GHG) emissions and save the ratepayers money.<sup>5657</sup>

SCE argues that this bid cap was justified for a number of reasons, as follows: (1) Energy Storage (ES) is a new and unknown class of energy resources;<sup>5758</sup> (2) the level of general risk involved, not the specific risks, citing to the Commission decision language that this is an “experiment,”<sup>5859</sup> (3) no time available to research the risks;<sup>5960</sup> (4) a modest level of ES, such as 50 MW, provides SCE with an opportunity to assess the costs and performance of these Energy Storage resources;<sup>6061</sup> (5) concerns that there might be transmission access charges (TAC) on grid connected ES;<sup>6162</sup> (6) an overvalued IFOM Energy Storage lease might be treated as a debt equivalent, resulting in a credit downgrade for SCE; (7) its Energy Storage procurement was consistent with the Commission’s directives.

In response to claim that the 100 MW cap did not limit Energy Storage procurement, Sierra Club notes that if the Commission never expected SCE to procure much Energy Storage, the Commission would not have authorized up to 1500 MW of potential Energy Storage to meet LCR need.<sup>6263</sup> SCE, however, points out that it did procure ~~twice~~over five times the minimum Energy Storage required and ~~an additional 260~~a total of 263.64 MW of ES-based resources.<sup>6364</sup> CESA takes issue with SCE’s characterization of Energy Storage as new or

<sup>5556</sup> ORA June 10, 2015 Opening Brief at 26.

<sup>5657</sup> ORA June 10, 2015 Opening Brief 26-28.

<sup>5758</sup> Exhibit SCE-1.

<sup>5859</sup> SCE June 10, 2015 Opening Brief at 7.

<sup>5960</sup> SCE June 10, 2015 Opening Brief at 9-10.

<sup>6061</sup> SCE June 10, 2015 Opening Brief at 7, *citing to* D.13-02-015 at 125.

<sup>6162</sup> SCE June 10, 2015 Opening Brief at 6.

<sup>6263</sup> Sierra Club July 1, 2015 Reply Brief at 2.

<sup>6364</sup> SCE June 10, 2015 Opening Brief at ~~8~~8, 15.

unknown, noting that SCE owns and operates a 32 MW gird-connected ES project in the Tehachapi Wind Resource Area.<sup>6465</sup>

Regarding risks related to IFOM Energy Storage procurement, SCE states that there was very little analysis that could have been done to accurately quantify the dollar equivalent cost of the risks created by each of the uncertainties discussed below.<sup>6566</sup> However, ORA states that SCE's own optimization tool identified between 400 to 900 MW of IFOM ES as the most optimal and economic resource. Due to the cap, however, more expensive energy was chosen to make up for the megawatts left on the table.<sup>6667</sup> There is no advantage, according to ORA, to the chosen Energy Storage for SCE aside from its smaller size.<sup>6768</sup> Moreover, none of SCE's original optimization identified the Stanton ~~peaker plant~~ project (offers 473237 and 473238).<sup>6869</sup>

In support of the cap, SCE also relies upon the reality of this particular RFO, which was on an unusually fast timeline and unique. As SCE states, "The LCR RFO presented unique and new challenges to SCE's procurement process. This was the first time SCE administered a solicitation that explicitly sought a range of resource technologies, from demand-side management resources to natural Gas-Fired Generation facilities. Additionally, within the solicitation, it was the first time SCE ever procured ES resources through a competitive solicitation."<sup>6970</sup> In addition, SCE needed to address the larger issue of meeting local reliability.<sup>7071</sup>

<sup>6465</sup> CESA July 1, 2015 Reply Brief at 3.

<sup>6566</sup> SCE July 1, 2015 Reply Brief at 5.

<sup>6667</sup> Sierra Club June 10, 2015 Opening Brief at 10; ORA June 10, 2015 Opening Brief at 25.

<sup>6768</sup> ORA June 10, 2015 Opening Brief at 26.

<sup>6869</sup> Exhibit ORA-2 at 14-16.

<sup>6970</sup> Exhibit SCE-1 at 15-16.

<sup>7071</sup> Exhibit SCE-1 at 15.

Regarding the possibility of a TAC on IFOM Energy Storage, this concern appears legitimate due to the timing of a definitive statement from the CAISO concluding SCE would not face these charges.<sup>7472</sup> SCE notes that a final TAC statement from the CAISO was not available at the time SCE made its selection decisions, but was available only “a few days before” it filed its application in November 2014. By then, however, it was too late to reconsider its decisions that had already been made.<sup>7273</sup>

Sierra Club also concludes SCE has failed to justify this departure from its least-cost best-fit local capacity modeling.<sup>7374</sup> ORA agreed with Sierra Club, noting that SCE cannot justify a 100 MW cap as reasonable when it has done no studies above 100 MW.<sup>7475</sup> Sierra Club notes that full ancillary services are a small fraction of overall value for Energy Storage, and that Energy Storage also provides energy, capacity, and ancillary services.<sup>7576</sup> ORA points out that SCE did not consider whether and to what extent ES would charge during peak hours, and did not run a sensitivity analysis to determine the degree to which such constraints would affect IFOM ES ancillary service revenue.<sup>7677</sup> Taken together, parties argue that SCE failed to justify its decisions under least-cost best-fit. SCE rejects these arguments, stating that because the Energy Storage charges and discharges to optimize revenues, the arguments above are not accurate.<sup>7778</sup> Moreover, SCE states that no current Energy Storage resources exist to perform benchmarking and, therefore, SCE is unable to benchmark its

<sup>7472</sup> SCE July 1, 2015 Reply Brief at 10. 6-7.

<sup>7273</sup> SCE July 1, 2015 Reply Brief at 5-6.

<sup>7374</sup> Sierra Club June 10, 2015 Opening Brief at 12.

<sup>7475</sup> ORA June 10, 2015 Opening Brief at 21.

<sup>7576</sup> Sierra Club June 10, 2015 Opening Brief at 13.

<sup>7677</sup> ORA June 10, 2015 Opening Brief at 21.

<sup>7778</sup> SCE July 1, 2015 Reply Brief at 8.



valuation against actual outcomes and adjust assumptions.<sup>7879</sup> SCE adopted the 100 MW cap due to uncertainties in the Energy Storage modeling, the uneven treatment between conventional and Energy Storage resources, and the forecasted decline in ES prices.<sup>7980</sup> SCE argues that any sensitivity analysis would not improve the accuracy of the results.<sup>8081</sup>

SCE further justifies its cap by stating that an overvalued IFOM Energy Storage lease might receive debt equivalence treatment, resulting in a credit downgrade for SCE. On the other hand, Sierra Club argues that since the overvaluation has not been justified, such treatment is equally unlikely.<sup>8182</sup> SCE provides no analysis to support how this RFO would lead to such a changed opinion from the current rating: stable.<sup>8283</sup>

The arguments presented on both sides of this issue are strong ones. We find, however, that SCE acted reasonably at the time in adopting a 100 MW cap for IFOM Energy Storage, based on the fact this RFO was unique, issued on a tight timeline, and needed to be performed in the absence of key information. Any future RFOs for Energy Storage will be evaluated based on the then-existing circumstances.

## 8. Stanton Energy Reliability Center LLC is Reasonable

Sierra Club argues that the contract with Stanton is not a prudent investment. We disagree and approve the contract.

<sup>7879</sup> SCE June 10, 2015 Opening Brief at 6, stating: “In-front-of-the-meter (“IFOM”) ES is a relatively new resource for which SCE does not have meaningful market operations and reliability effectiveness experience. The 100 MW of IFOM ES selected in SCE’s LCR RFO represents a massive and unprecedented increase in IFOM ES in the state of California (and, arguably, the United States).”

<sup>7980</sup> SCE July 1, 2015 Reply Brief at 9.

<sup>8081</sup> SCE July 1, 2015 Reply Brief at 10.

<sup>8182</sup> Sierra Club June 10, 2015 Opening Brief at 15.

<sup>8283</sup> SCE July 1, 2015 Reply Brief at 10.

SCE entered into separate GFG contracts with AES Alamos Energy, LLC and AES Huntington Beach Energy, LLC for two CCGTs.<sup>8384</sup> Both projects are brownfield developments, with one being constructed at the existing Alamos site and one CCGT being constructed at the existing Huntington Beach site.<sup>8485</sup> The units will both be combined cycle units and offer the best available operating technology parameters.<sup>8586</sup> Each location has a current gas-fired facility with existing interconnection and transmission infrastructure.<sup>8687</sup>

SCE entered into a third RA-only contract with Stanton, for two GE simple cycle combustion turbines, with a total expected contract capacity of 98 MW.<sup>8788</sup> SCE will not control the dispatch rights under the contract and does not receive any energy or ancillary service benefits.<sup>8889</sup> However, under the RA-only agreement, resource must bid into the CAISO market as an RA resource pursuant to the CAISO tariff.<sup>8990</sup> The Stanton project will be located in Stanton, California and interconnect to SCE's Barre substation.<sup>9091</sup>

In arguing against approval of the Stanton project, Sierra Club points out that SCE does not control the dispatch rights of Stanton under the contract and does not receive any energy or ancillary benefits.<sup>9192</sup> Sierra Club further states that, since Stanton would be online from 2020-2040, SCE will be promoting a ~~fossil fueled~~<sup>fossil fueled</sup> plant just as California needs to make progress toward 50 percent renewables.<sup>9293</sup> Sierra Club also criticizes Stanton, as it will not be able to help with the projected over-generation issues incumbent with higher

<sup>8384</sup> Exhibit SCE-1 at 78.

<sup>8485</sup> Exhibit SCE-1 at 78.

<sup>8586</sup> Exhibit SCE-1 at 78.

<sup>8687</sup> Exhibit SCE-1 at 78.

<sup>8788</sup> Exhibit SCE-1 at 79.

<sup>8889</sup> Exhibit SCE-1 at 78.

<sup>8990</sup> Exhibit SCE-1 at 78.

<sup>9091</sup> Exhibit SCE-1 at 78.

<sup>9192</sup> Exhibit SCE-1 at 79-78.

<sup>9293</sup> Sierra Club July 1, 2015 Reply Brief at 6.

renewables, as would Energy Storage.<sup>9394</sup> Sierra Club suggests that the Commission reject Stanton as not fitting its least cost/best fit procurement.<sup>9495</sup>

EnerNOC also objects to Stanton, noting that the GFG peaker plant meets a need that could have been met by actual Demand Response.<sup>9596</sup> While SCE may have selected this GFG because of its claimed shortfall in Demand Response bids, EnerNOC asserts it is inconsistent with the Loading Order and the procurement authority granted in D.13-02-015 and D.14-03-004 to approve this procurement.<sup>9697</sup>

Stanton responds that it will meet the RFO objectives while “facilitating California’s transition to a cleaner energy future.”<sup>9798</sup> The project will be able to act as a synchronous condenser which allows the facility to provide voltage support without any GHG emissions and contribute to CAISO’s mandatory frequency response obligation.<sup>9899</sup> It will also have a battery, of a size not mentioned in their brief.<sup>99</sup> that allows the project to provide certain ancillary services, including spinning reserves, frequency response and fast ramping capability.<sup>100</sup>

Sierra Club comments upon the newly-created battery for Stanton, noting that the offer does not mention either the battery or the synchronous condensers touted in SERC’s brief.<sup>100101</sup> By choosing Stanton over additional Energy Storage, Sierra Club argues that SCE is prioritizing a polluting technology of limited grid

<sup>9394</sup> Sierra Club July 1, 2015 Reply Brief at 6.

<sup>9495</sup> Sierra Club July 1, 2015 Reply Brief at 2.

<sup>9596</sup> EnerNOC June 10, 2015 Opening Brief at 16.

<sup>9697</sup> EnerNOC June 10, 2015 Opening Brief at 16-17.

<sup>9798</sup> SERC June 10, 2015 Opening Brief at 1.

<sup>9899</sup> Stanton June 10, 2015 Opening Brief at 2.

<sup>99100</sup> Stanton June 10, 2015 Opening Brief at 3.

<sup>100101</sup> Sierra Club July 1, 2015 Reply Brief at 6.

value over a highly flexible resource that will be increasingly needed to cost-effectively achieve California's GHG and clean energy objectives.<sup>101</sup><sup>102</sup>

In support of the project, SCE argues that the highly flexible Stanton project will facilitate the integration of higher levels of renewable resources.<sup>103</sup> SCE points out that due to its location, the Stanton project will help address the critical 500 kV contingency in the LA Basin and San Diego local areas.<sup>104</sup> The CAISO concurs that the Stanton project "has a high locational effectiveness factor due to its point of interconnection at the Barre Substation" in the western Los Angeles Basin.<sup>105</sup>

We find the contract meets the requirements in D.13-02-015 and D.14-03-004. While Sierra Club raises strong arguments, we find that under the circumstances as they existed at the time SCE made its selections this contract was a reasonable means of meeting the Commission's procurement directive.

## **9. GFG Procurement is Reasonable**

Sierra Club argues that SCE procured GHG based on the requirement of 33 percent renewable but that a higher percentage is warranted based on the current political movement toward 50 percent renewables. More specifically, Sierra Club argues that either the Alamitos or the Huntington Beach ~~or, alternatively, both~~ ~~GFG plants, be reduced to 360 MW.~~ GFG plants providing approximately 640 MWs of capacity each should be rejected, and that SCE should procure a smaller 360 MW facility in their place.<sup>106</sup> Sierra Club, as addressed above, also requests the Commission to reject Stanton.

<sup>101</sup><sup>102</sup> Sierra Club July 1, 2015 Reply Brief at 6-7.

<sup>103</sup> SCE November 2, 2015 Reply Comments at 5.

<sup>104</sup> Id.

<sup>105</sup> CAISO November 2, 2015 Reply Comments at 5.

<sup>106</sup> Sierra Club June 10, 2015 Opening Brief at 3.

Sierra Club's argument is based on the fact that SCE's procurement assumed future requirements at 33 percent RPS, and did not study the sensitivity of the resource value for GFG at higher renewable levels. Therefore, according to Sierra Club, the economic benefit of a combined cycle was overstated in the SCE RFO process and the economic value of in front of the meter Energy Storage was understated.<sup>102107</sup> It would make more sense, states Sierra Club, given the state's increasing interest in a higher requirement for renewables resources, to procure the minimum required GFG or 1,000 MW.

SCE defends the results of its RFO, noting that it has procured GFG within the bounds of the Commission's procurement authorization in D.13-02-015 and D.14-03-004 and, therefore, its GHG procurement is reasonable and proper.<sup>103108</sup>

According to SCE, Sierra Club's recommendation would essentially rewrite the procurement to have a 1,000 MW maximum, which is procedurally improper and untimely.<sup>104109</sup> SCE argues that it was entirely appropriate to study a 33 percent renewables scenario since the current requirement is 33 percent.<sup>105110</sup> Additionally, SCE asserts that GFGs can facilitate the integration of higher levels of renewables, so it is not clear how a higher standard would affect the analysis.<sup>106111</sup>

Powers Engineering also objects to the amount of GFG contracted by SCE. This choice will result in higher GHG emissions and pollution than the status quo, and goes against the Commission's prior decisions directing procurement that reduces GHG emissions.<sup>107112</sup> The GFG chosen for Huntington Beach and Alamitos will produce over 4 million tons per year of GHG emissions based on

<sup>102107</sup> Sierra Club June 10, 2015 Opening Brief at 18.

<sup>103108</sup> Sierra Club July 1, 2015 Reply Brief at 22.

<sup>104109</sup> SCE July 1, 2015 Reply Brief at 22.

<sup>105110</sup> SCE July 1, 2015 Reply Brief at 24.

<sup>106111</sup> SCE July 1, 2015 Reply Brief at 24.

<sup>107112</sup> Powers Engineering June 10, 2015 Opening Brief at 2.

the usage rates modeled by SCE.<sup>408113</sup> These units replace low emission OTC units and zero-emission SONGS. This will also be a much larger increase than if SCE had chosen combustion turbine (CT) peaker technology.<sup>409114</sup> Choosing these combine cycle GFG plants thus violates the Loading Order.<sup>410115</sup> Powers Engineering also notes that the lack of demand growth in the Western LA Basin is a changed circumstance that did not exist in 2013 when D.13-02-015 was finalized.<sup>411116</sup>

SCE notes that CAISO's 2014-2015 Transmission Plan identifies that the total amount of this procurement is required.<sup>412117</sup> SCE further states that any request to relook at the prior Commission procurement directive in D.13-02-015 and D.14-03-004 and examine the CAISO Transmission Plan obscures the fact that the transmission plan is already an exhibit to this proceeding, and the assumptions behind the plan were published as part of the 2014 LTPP proceeding.<sup>413118</sup>

We agree with SCE. Regardless of whether circumstances have changed since the issuance of D.13-02-015 and D.14-03-004, and even if the political landscape is solidly looking toward 50 percent renewables, we find SCE acted reasonably in relying on a 33 percent scenario and contracting for the proposed amount of GFG.

<sup>408113</sup> Powers Engineering June 10, 2015 Opening Brief at 3.

<sup>409114</sup> Powers Engineering June 10, 2015 Opening Brief at 3.

<sup>410115</sup> Powers Engineering June 10, 2015 Opening Brief at 3.

<sup>411116</sup> Powers Engineering June 10, 2015 Opening Brief at 3, 9-11.

<sup>412117</sup> SCE July 1, 2015 Reply Brief at 35-36.

<sup>413118</sup> SCE July 1, 2015 Reply Brief at 36.

**10. Approval of these Contracts before Completion of CEQA Review by the CEC is Permissible but Contract Approval Cannot be used to Prejudice CEQA Outcome**

The Los Cerritos Wetlands Land Trust (LCWLT) argues that the Commission cannot approve a contract until the CEC completes its environmental review of the project.<sup>114119</sup>

Over the years, the Commission has addressed its role in approving power purchase contracts. For example, in a proceeding in which SCE was seeking recovery of costs associated with five PPAs, the Commission stated in its decision that prior Commission decisions made clear that CEQA does not apply to Commission review of PPAs.<sup>115120</sup> The Commission has also stated that a contract for purchase power by a regulated entity is not is not a “project” pursuant to CEQA.<sup>116121</sup> LCWLT, however, argues that “[i]f the Commission approves the contracts prior to certification of an EIR, it will effectively preclude CEC review of alternatives....”<sup>117122</sup>

We find that no law specifically requires the Commission wait until CEQA review is complete. We further find that if the project is not approved by the CEC under CEQA, termination of a contract with SCE may result.

We further find that no law specifically requires us to approve contracts before CEQA review is complete. Rather, we use our best judgement in each case to determine the optimal timing of our contract review and disposition. In some cases, we will find that making a contract decision independent of the CEC’s CEQA review is reasonable.

<sup>114119</sup> LCWLT June 10, 2015 Opening Brief at 2.

<sup>115120</sup> D.86-06-060, 1986 Cal. PUC LEXIS 424, at \*29 (June 25, 1986).

<sup>116121</sup> D.15-05-051 at 29-30.

<sup>117122</sup> LCWLT June 10, 2015 Opening Brief at 6.



In this case, we find that contract approval now, prior to approval of the CEC's CEQA review is reasonable. Misuse of the Commission's contract approval, however, is not permitted. For example, parties are directed to not interfere with the CEC's review by, for example, impressing upon the CEC that contract damages may result if the project is not approved under CEQA. The CEC's CEQA review can and should be conducted independent of the parties' opinions regarding potential damages and risks based on the Commission's approval of the underlying contract.

#### **11. Cost Allocation Mechanism Treatment is Reasonable**

Pursuant to Pub. Util. Code § 365.1(c)(2)(A) and (B), if the Commission determines that new generation is required to meet local or system area reliability needs for the benefit of all customers in a utility's service area, the utility must allocate the net capacity costs for the new capacity to all benefitting customers including direct access, community choice aggregation, and bundled load customers.

The Commission adopted the Cost Allocation Mechanism or CAM in D.06-07-029 and refined it in D.11-05-005, as a mechanism for allocating such net capacity costs to all benefitting customers.

In D.14-03-004 and D.14-11-027, the Commission addressed the question of whether the net capacity costs associated with procurement authorized pursuant to D.14-03-004 should be allocated to all consumers. In D.14-03-004, the Commission found that "the procurement authorized in this decision is for the purpose of ensuring local reliability in the SONGS service area for the benefit of all utility distribution customers in that area," and further concluded that

“procurement authorized in this decision meets the criteria of § 365.1(c)(2) (A)-(B) for the purposes of cost allocation.”<sup>[118](#)[123](#)</sup>

In D.14-11-027, which rejected a petition to modify D.14-03-004 to provide that the final determination about whether to allocate costs to all customers would be made in specific applications for procurement approval, the Commission affirmed that the clear intention of D.14-03-004 is that the costs of all resources procured pursuant to the procurement authority granted by that decision be allocated to all customers.

As D.14-11-027 explained, however, D.14-03-004 recognized that the CAM was developed for generation resources and might not be an appropriate cost allocator for some preferred resources. While the cost of such resources must nevertheless be allocated to all customers, D.14-11-027 clarified that “the actual mechanism utilized to accomplish this could be CAM or another mechanism. The question of appropriate mechanism remains to be determined in applications pursuant to D.14-03-004.”<sup>[119](#)[124](#)</sup>

SCE proposes CAM as the mechanism for allocating the net capacity costs associated with the approved contracts to all consumers. SCE also recommends other methods.<sup>[120](#)[125](#)</sup> No party recommends other mechanism, and we find no reason to adopt a different mechanism.

In addition, on March 27, 2015, a joint motion was filed seeking to enter into the record a Joint Memorandum of Understanding with respect to cost allocation issues in this proceeding.<sup>[121](#)[126](#)</sup> This motion is granted and informs implementation of cost allocation.

<sup>[118](#)[123](#)</sup> D.14-03-004 at Finding of Fact 92 and Conclusion of Law 50.

<sup>[119](#)[124](#)</sup> D.14-11-027 at 9-10.

<sup>[120](#)[125](#)</sup> Exhibit SCE-1, Chapter 8.

<sup>[121](#)[126](#)</sup> This March 27, 2015 motion was filed by SCE, AReM, DACC.

Therefore, we adopt SCE's recommendations and the Joint Memorandum as the mechanism for allocating the net capacity costs associated with the approved contracts to ratepayers.

## 12. Outstanding Motions

The following motions are granted or denied, as set forth below.

1. May 13, 2015 *SCE Motion to Correct Transcript* is granted.
2. May 15, 2015 *Stanton Energy Motion to Correct Transcript* is granted.
3. June 3, 2015 *Sierra Club Motion to Admit Follow-Up Data Request into Record* is granted based on ruling by the Administrative Law Judge (ALJ) during evidentiary hearings.
4. June 10, 2015 *ORA Motion for Leave to file Confidential Version of Opening Brief* is granted.
5. July 7, 2015 *Sierra Club Motion Strike Portions of SCE Reply Brief* is denied on the basis that the Reply Brief is legal argument.

We further confirm the rulings on all other motions by the ALJ.

## 13. Comments on Proposed Decision

The alternate proposed decision Commissioner Florio in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on ~~\_\_\_\_\_~~ [October 26, 2015 by California Clean DG Coalition, California Large Energy Consumers Association, CAISO, CARE, EnerNOC, Inc., NRG Distributed Generation PR, LLC, SCE, Sierra Club, ORA, and Powers Engineering](#), and reply comments were filed on ~~\_\_\_\_\_~~

~~by \_\_\_\_\_~~ November 2, 2015 by CAISO, CARE, SCE, Sierra Club, ORA, and Powers Engineering.

#### **14. Assignment of Proceeding**

Michel Florio is the assigned Commissioner and Regina M. DeAngelis is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. SCE issued this RFO pursuant to the procurement directives in two Commission decisions, D.14-03-004 and D.13-02-015.
2. The results of SCE's RFO issued pursuant to D.14-03-004 and D.13-02-015 are consistent with the CAISO's planning assumptions in the 2014-2015 transmission plan and support the safe and reliable operation of SCE's electrical service.
3. The CAISO analyzed the results of the RFO in the context of the draft 2014-2015 transmission plan and found that the proposed RFO procurement can meet long-term local capacity requirement needs when combined with repurposing of existing demand response resources in the Western LA Basin starting ~~2012~~2021.
4. SCE and the CAISO worked together to confirm that the location and characteristics of the procured resources would meet local capacity needs.
5. The CAISO found that SCE's RFO procurement was reasonable based on the locational effectiveness factors identified in both its 2013-2014 and 2014-2015 transmission plans.
6. The selected resources will effectively address two major reliability concerns for the LA Basin and San Diego areas and will address the residual need in the Western LA Basin.

7. SCE seeks approval of contracts totaling approximately 1,883 MW of capacity. The results of SCE's RFO are approximately 17 MW short of the minimum procurement target set forth in D.14-03-004 and D.13-02-015 for capacity in the Western LA Basin area and 99 MW short in procurement of Preferred Resources.

8. SCE designed and conducted the LCR RFO based on a procurement plan approved by the Energy Division, and with oversight by an Independent Evaluator and review throughout the LCR RFO process by the Energy Division and SCE's Cost Allocation Mechanism Group.

9. The Western LA Basin LCR RFO elicited a robust response from a broad range of resources capable of satisfying the LA Western Basin LCR need.

10. The SCE RFO issued pursuant D.13-02-015 and D.14-03-004 was reasonable and consistent with the law.

11. The results of the RFO, with the exception of the ~~seven~~<sup>six</sup> contracts, substantially comply with the procurement directives in D.14-03-004 and D.13-02-015.

12. SCE has substantially satisfied the procurement requirements of D. 14-03-004 and D.13-02-015, and is relieved from the *requirement* to procure additional resources as part of the RFO required by D.14-03-004 and D.13-02-015. However, SCE remains *authorized* to procure additional preferred resources under those decisions, or via other approved procurement mechanisms

13. The term Preferred Resources references the description of the loading order in the State's Energy Action Plan II and must be interpreted consistent with the term loading order.

14. Commission's intention regarding the use of both the term Preferred Resources and loading order has been to encourage reduced reliance upon

conventional fossil fuel generation and to require procurement of “renewable generation to the fullest extent possible,” referring to D.07-12-052.

15. According to the terms and conditions, NRG Offer 447250 lacks a key piece of information - the extent to which fossil fuel will be used to support load during a curtailment. However, NRG now states a willingness to amend the contract to preclude the use of BTM gas-fired generation to support the 5 MW of demand response.

~~16. Seven contracts, Offers 447200–447205 & 447250, have excessive loopholes, which render the contracts unreasonable and may subject ratepayers to excessive costs, whether viewed as Demand Response, Distributed Generation, or more broadly, Preferred Resources. The loopholes in these contracts consist of the following:~~

~~The contracts lack adequate assurance that ratepayers will obtain value by failing to provide a reasonable amount of information regarding the participating accounts to fulfill expected capacity to ensure reliability.~~

~~The contracts permit dual and overlapping participation in the CAISO market and SCE’s demand response programs which leaves ratepayers vulnerable to overpayment.~~

~~The contracts are overvalued as performance and payment is based on seller’s average best performing hour rather than capacity rating on performance during all event hours.~~

~~The contracts fail to provide reasonable value to the ratepayer because a SCE is only able to call a seller dispatch within a three-day period, rather than 30-day period, which more closely resembles the actual dispatch.~~

16. 17. As part of the RFO for the Western LA Basin, SCE did not consider bids for in front of the meter Energy Storage above 100 MW.

~~17. 18.~~ SCE procured ~~twice~~over five times the minimum Energy Storage required in D.13-02-015 and D.14-03-004 and ~~an additional 260~~a total of 263.64 MW of Energy Storage-based resources.

~~18. 19.~~ Risks related to IFOM Energy Storage procurement were difficult to quantify. In addition, this RFO needed to be issued and completed on an unusually fast timeline and was the first time SCE administered a solicitation that explicitly sought a range of resource technologies, from demand-side management resources to natural Gas-Fired Generation facilities. Also, within the solicitation, it was the first time SCE procured Energy Storage resources through a competitive solicitation.

~~19. 20.~~ SCE acted reasonably at the time in adopting a 100 MW cap for IFOM Energy Storage in this RFO on the basis that the RFO pursuant to D.13-02-015 and D.14-03-004 was unique; it was issued and completed on a tight timeline; and the RFO needed to be issued and performed in the absence of key information. Any future RFOs including IFOM Energy Storage will be evaluated based on the then-existing circumstances.

~~20. 21.~~ The Stanton contract meets the requirements in D.13-02-015 and D.14-03-004.

~~21. 22.~~ In implementing the directives in D.13-02-015 and D.14-03-004, SCE relied on a 33 percent scenario and contracting for the proposed amount of GFG.

~~22. 23.~~ In this proceeding, SCE asks the Commission to approve a power purchase contract before the CEC completes CEQA review or other environmental review of the project.

~~23. 24.~~ Approval of power purchase contracts by the Commission should not unduly influence the outcome of any CEQA review or other environmental review by the CEC.



~~24. 25.~~ D.14-11-027 clarified, generally, that the actual mechanism utilized to allocate costs for some Preferred Resources, as addressed in this proceeding, could be accomplished via CAM or another mechanism.

~~25. 26.~~ With the exception of the implementation matters addressed in the March 27, 2015 joint motion and the Joint Memorandum of Understanding, no party recommends an alternative mechanism for cost allocation set forth in SCE-1, Chapter 8, and no reason exists today to adopt a different method.

### Conclusions of Law

1. While SCE's choices regarding the RFO were not perfect, and parties may point to certain area where better choices could have been made, the choices made by SCE were reasonable based on the directives of the Commission in D.13-02-015 and D.14-03-004 and the circumstances at that time.

2. Based on the CAISO's local capacity requirement analyses, it is reasonable to find that the selected RFO resources will enhance the reliable operation of SCE's electrical service and support reliability of service starting in 2021.

3. With certain exceptions, the results of the RFO reasonably comply with the procurement directives in D.14-03-004 and D.13-02-015.

4. It is reasonable to provide for additional time and analyses to assess the need for additional MW of Preferred Resources to meet LCR in the Western LA Basin.

~~5. Because Offer 447250 (also referred to as the seventh contract) lacks a key piece of information—the extent to which fossil fuel will be used to support load during a curtailment, the Commission should proceed as if gas will be relied upon, a reasonable assumption based on the terms and conditions of six other similar contracts submitted for approval in this proceeding.~~

~~5.6.~~ ~~The seven~~ Because Offer 447250 (also referred to as the seventh contract) lacks a key piece of information - the extent to which fossil fuel will be used to support load during a curtailment, the Commission will approve it subject to the condition that within 45 days of the effective date of this decision, SCE submit a Tier 1 Advice Letter amending the contract to exclude use of BTM gas-fired generation to support the 5 MW of demand response. The six NRG contracts, Offers 447200- 447205 & ~~447250~~ totaling ~~75~~70 MW, do not constitute Demand Response and fail to constitute Preferred Resources procurement under D.13-02-015 and D.14-03-004 because they rely on natural gas-fired ~~backup~~ BTM generation and not renewable technology, and are therefore inconsistent with the loading order and the State's policy to reduce reliance on fossil fuels. ~~The contract terms and conditions are also unreasonable.~~

~~6.7.~~ SCE has substantially complied with its Preferred Resource procurement requirement in D.13-02-015 and D.14-03-004 and, as a result, is relieved from its obligations of procuring the any additional MW under D.13-02-015 and D.14-03-004. However, SCE remains *authorized* to procure additional Preferred Resources under those decisions, or via other approved procurement mechanisms

~~7.8.~~ The 100 MW cap for IFOM Energy Storage was reasonable on the basis that the RFO pursuant to D.13-02-015 and D.14-03-004 was unique; it was issued and completed on a tight timeline; and the RFO needed to be issued and performed in the absence of key information on Energy Storage. Any future RFOs including IFOM Energy Storage will be evaluated based on the then-existing circumstances.

~~8.9.~~ No law specifically requires the Commission to approve power purchase contracts before the CEC completes its environmental review or CEQA review,

and the Commission uses its best judgement in each case to determine the optimal timing of our contract review and approval.

~~9.10.~~ In this case, the Commission finds that review and approval of the power purchase contract now, prior to approval of the CEC's environmental review or CEQA review, is reasonable. Misuse of the Commission's prior grant of contract approval, however, is not permitted.

~~10.11.~~ Under the circumstances as they existed at the time SCE made its selections, the Stanton contract meets the requirements in D.13-02-015 and D.14-03-004 and is a reasonable means of meeting the Commission's procurement directive therein.

~~11.12.~~ Regardless of whether circumstances have changed since the issuance of D.13-02-015 and D.14-03-004, and even if the political landscape is solidly looking toward 50 percent renewables, SCE acted reasonably in relying on a 33 percent scenario and contracting for the proposed amount of GFG.

~~12.13.~~ The plan for the allocation of costs and benefits as set forth in Chapter 8 of Exhibit SCE-1 and the March 27, 2015 Joint Memorandum of Understanding present a reasonable mechanism for allocating the net capacity costs and the benefits associated with the approved contracts to ratepayers in this proceeding.

## **ORDER**

### **IT IS ORDERED that:**

1. Southern California Edison Company (SCE) substantially complied with the procurement directives in Decisions 13-02-015 and 14-03-004. All contracts presented are approved with the exception of Offers 447200- ~~447205 &~~

~~447250.447205.~~ Offer 447250 is approved, subject to the condition that within 45 days of the effective date of this decision, SCE submit a Tier 1 Advice Letter amending the contract to exclude use of BTM gas-fired generation to support the 5 MW of demand response.

2. Southern California Edison Company (SCE) shall allocate costs associated with the contracts approved in this proceeding according to Chapter 8 of Exhibit SCE-1 and the March 27, 2015 Joint Memorandum of Understanding.

3. Southern California Edison Company shall establish the Local Capacity Requirement Products Balancing Account.

4. Interference with the California Energy Commission's (CEC) California Environmental Quality Act (CEQA) review process or other environmental review by, for example, unreasonably impressing upon the CEC that contract damages may result if a project is not approved under CEQA, is not permitted. The CEC's CEQA review or other environmental review should be conducted independent of the fact that potential damages and risks may result because the Commission has issued its approval of the underlying power purchase contract.

5. All rulings on motions issued by the Administrative Law Judge (ALJ) during the proceeding are adopted. In addition, the following motions are granted or denied: May 13, 2015 *SCE Motion to Correct Transcript* is granted; May 15, 2015 *Stanton Energy Motion to Correct Transcript* is granted; June 3, 2015 *Sierra Club Motion to Admit Follow-Up Data Request into Record* is granted based on ruling by the ALJ during evidentiary hearings; June 10, 2015 *ORA Motion for Leave to file Confidential Version of Opening Brief* is granted; July 7, 2015 *Sierra Club Motion Strike Portions of SCE Reply Brief* is denied on the basis that the Reply Brief is legal argument.

6. Application 14-11-012 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

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Total changes	533
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